

**Planning Commission
Staff Report**

February 15, 2007



Case:	9-4-06VW
Project Name:	Restaurant, Retail, Veterinary Clinic
Location:	10500 Thixton Lane & 9806 Vista Hills Boulevard
Owners:	SJS Land, LLC
Applicant:	Same
Representative:	BTM
Area:	4.41 acres
Form District:	Neighborhood
Zoning District:	R-4 and C-1 to C-2
Jurisdiction:	Louisville Metro
Council District:	20—Stuart Benson
Case Manager:	Steve Hendrix

Request

Change in zoning from R-4 Single Family Residential and C-1 Commercial to C-2 Commercial, and a variance to allow Building Two to be 98 feet from Thixton Lane, and a waiver to reduce the Landscape Buffer Area to 15 feet along the southern property line on properties located at 10500 Thixton Lane & 9806 Vista Hills Boulevard and being in Louisville Metro.

Staff Recommendation

Staff recommends **APPROVAL** of the zoning change request, variance and waiver.

Case Summary / Background

Summary

The site is 4.41 acres in the Neighborhood Form District located on the southwestern corner of the Thixton Lane/Vista Hills Blvd. intersection. The properties have two main structures and accessory buildings that will be removed. The applicant is proposing to construct three buildings on the site. Building One will consist of a one story 5,000 square foot restaurant. Building Two will be one story with 21,550 square feet of retail and commercial space. Building Three has been designated for a one story, 6,000 square foot kennel/veterinary hospital. The proposal has been before the Commission twice and was last at LD&T on December 28, 2006.

Hearing Date : February 15, 2007

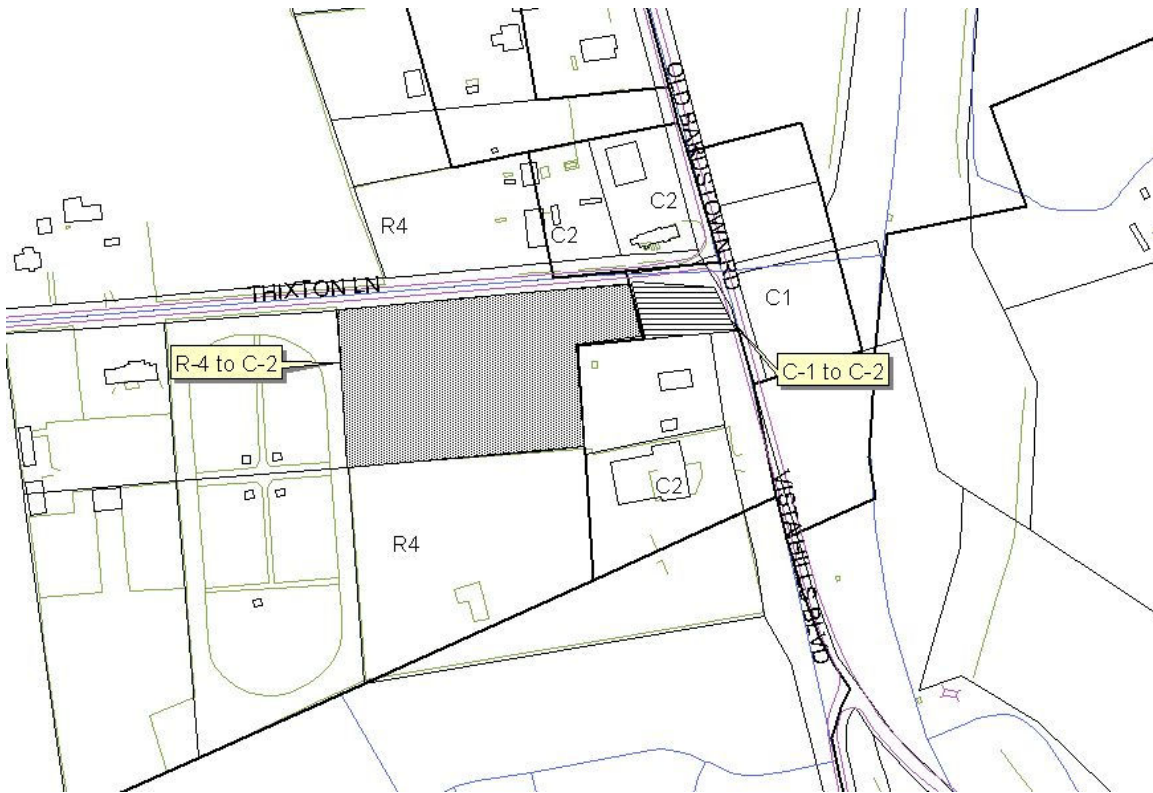
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Site Context

The site is surrounded by single-family residential zoned property to the north, south, and west and commercially zoned property to the northeast, east, and southeast. The residential property to the west is used for a horse training facility, and the property to the south is vacant. A farm equipment dealership is located southeast of the site, while a barbeque restaurant is located northeast of the site. The property east of the site and across Vista Hill Blvd. is vacant and owned by the State.





Land Use / Zoning District / Form District

Land Use		Zoning Form District	
Subject			
Existing	Single family residential and commercial	R-4, C-1	Neighborhood
Proposed	Retail, restaurant, veterinary hospital	C-1	Neighborhood
Surrounding			
North	Commercial	C-2	Neighborhood
South	Commercial, single family residential	R-4, C-2	Neighborhood
East	Vacant	C-1	Neighborhood
West	Horse training facility	R-4	Neighborhood

Project History	Date	Issues addressed / discussion / changes to proposal
Project submittal	1/12/06	
Site Inspection Committee	2/02/06	
LD&T review	2/09/06	
Public hearing	6/01/06 7/6/06	Continued
LD&T review	12/28/06	Site Plan revisions- parking in rear, building moved closer to Thixton Lane, improved pedestrian connectivity,
Public hearing	2/15/07	Renderings

Note: The following information represents staff analysis of the subject property with respect to site inspection/observation, sound planning practices, and adopted policies and regulations of the jurisdiction. Materials submitted by the applicant or their representative prior to the deadline for filing information related to cases docketed for this hearing were reviewed and specifically applied in the staff review of this request. The board is advised to consider this staff report as well as new information introduced at the hearing in formulating their decision.

Staff Findings

1. Staff finds that the land use is appropriate for the site, and that the rezoning is consistent with the Comprehensive Plan and the Fern Creek Small Area study (guidelines noted below).
2. Staff finds that the proposed screening and buffering is appropriate.

Relationship to Comprehensive Plan - Cornerstone 2020 Plan Elements:

Community Form:

1. B.3. Suburban Neighborhood Form District, 3.1 Compatibility, and 3.2 Consideration of Building Materials,

The site is within a Neighborhood Form District which is characterized by predominantly residential uses that vary from low to high density and blend compatibly into the existing landscape and neighborhood areas. The Neighborhood Form may contain open space and at appropriate locations, civic uses and neighborhood centers with a mixture of uses such as offices, retail shops, restaurants and services. Staff finds that the proposed land uses are compatible with the form district and development nearby. In addition, the plan is compliant with the Fern Creek Small Area Study, and is located at an intersection recommended by that study for commercial use.

3.9 Visual Impacts, 3.22 Buffers. 3.23 Setbacks

The applicant was requested to increase the animating features of the building at the LD&T meeting on December 28, 2006. The applicant will be submitting those renderings. The applicant is requesting a waiver from the Landscape Buffer Area along the southern boundary next to the R-4 zoned property from 25 feet to 15 feet, the amount of plantings and screening would remain the same. The applicant is also requesting a variance to exceed the front setback of 80 feet. Building #2 now has a setback of 98 feet instead of 160 feet and meets the 50 foot rear setback.

Natural Areas and Scenic and Historic Resources

5.1 Natural Features

Staff finds that the proposed development will not have a significant impact on the slope of the property.

Mobility/Transportation Circulation

7.6 Access to Surrounding Land Uses, 7.9 Dedication of Right-of-Way.

Staff finds that Thixton Lane and Bardstown Road have adequate traffic bearing capacity. Thixton Lane is currently a collector level street and is also an identified scenic corridor. The applicant has provided all the necessary road improvements, and is meeting the scenic corridor buffer requirements. Twenty feet has been dedicated to the Thixton Lane right of way for a distance of 455 feet.

The surrounding intersection has small-scale commercial and vacant property, some of which is zoned commercially. The proposed development appears to be compliant with the overall community form in the area.

Livability/Environment

Flooding & Stormwater

10.7, 10.11 Accommodation of Stormwater Runoff.

It has been determined that stormwater run-off caused by the proposed development will not cause any issues for the watershed.

Relationship to Neighborhood, Small Area, Corridor or Other Plan(s)

The land use is compliant with the adopted Small Area plan for the area.

Excerpt from the *Fern Creek Small Area Study*, relative to commercial use recommendations south of the Gene Snyder Freeway.

The only location where new commercial activity is recommended south of the Gene Snyder Freeway is at the southern end of the land between Old Bardstown Road and the new alignment of Bardstown Road, adjacent to the intersections with Thixton Lane (see parcel specific map). This location is recommended to be developed as an activity center. As such, it should be developed at a neighborhood-scale, consisting of commercial uses that are intended to meet the day to day needs of adjacent residential neighborhoods. The commercial uses within this activity center should encompass no more than 100,000 square feet of gross floor area, including all existing commercial uses. Surrounding and incorporated within this neighborhood-scale commercial area, professional office uses would be appropriate. To ensure that all development in this activity center is of a neighborhood rather than a regional scale, no single structure within the activity center should exceed 50,000 square feet, thus precluding the development of “big box” retail stores. All commercial and office uses proposed in this activity center should be designed to be in-scale and compatible with existing residential uses.

Below is Figure 4 of the *Fern Creek Small Area Study*, which shows the limits of the recommended commercial node south of the Gene Snyder Freeway.

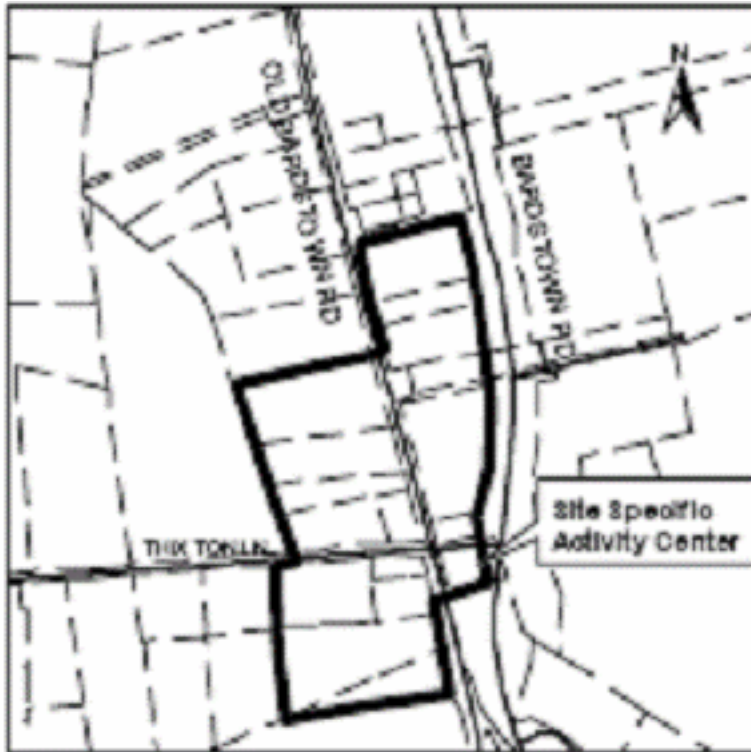


Figure 4: Neighborhood serving activity center

Variance:

Location	Requirement	Request	Variance
Building #2	80 foot maximum setback	98 feet	18 feet

The applicant requests a variance for Building Two to be 98-feet from the right-of-way of Thixton Lane. The maximum setback allowed for a non-residential structure in the Neighborhood form district is 80-feet from the front property line.

In order to justify approval of the variance, the Planning Commission considers four criteria.

- a.) Will not adversely affect the public health, safety or welfare.
Staff finds that the variance request will not adversely affect the public health, safety or welfare. The variance does not create any type of traffic concern or sight distance problem. The request has been reduced from the initial 160 feet to only 98 feet with the design revisions.

- b.) Will not alter the essential character of the general vicinity.
Staff finds that the essential character of the general vicinity will not be changed by the variance. It appears that similar setbacks can be found in other commercial districts.
- c.) Will not cause a hazard of a nuisance to the public.
Staff finds that the proposed variance will not cause a hazard or nuisance to the public, but allows for an improved pedestrian and traffic flow.
- d.) Will not allow an unreasonable circumvention of the requirements of the zoning regulation.
Staff finds that the variance request is not an unreasonable circumvention of the zoning regulation, since the proposal is minimal and is a result of directed revisions.

Additional consideration:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or in the same zone.

The applicant states: see applicant justification.

- (b) How the strict application of the provisions of the regulations would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

The applicant states: see applicant justification.

- (c) Are the circumstances the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought?

The applicant states: see applicant justification.

WAIVERS:

Location	Requirement	Request	Waiver
Southern property line.	25 foot landscape buffer area.	15 foot landscape buffer area	To reduce the required LBA to a width of 15 feet.

Conditions to be met to grant the waiver:

1. The waiver will not adversely affect property owners.
2. The waiver will not violate the guidelines of the Comprehensive Plan.
3. The extent of the waiver is the minimum necessary to afford relief to the applicant.

And:

The applicant has incorporated other design measures that exceed the minimums of the district, which compensate for non-compliance with the requirements to be waived.

Or:

That strict application of the provisions of the regulation would deprive applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

Staff analysis:

1. The adjacent residential property to the south is currently vacant.
2. Staff finds that the parcel in the rear of the lot is also vacant, and is within an area recommended in the Fern Creek Small Area Study for non-residential use. Staff also has a pre-application plan on file in the Department of Planning and Design Services office for a non-residential development of the property in the rear, and if that property is rezoned, no landscaping will be required along this rear property line.
3. Staff finds that these circumstances justify the proposed waiver, since the required screening would still have to be installed.

Staff recommends approval of the waivers, for the reasons listed above.

Notification

The following forms of notification were provided pertaining to this proposal:

Date	Description	Recipients
December 12, 2006	Public Hearing Notice	APO & Neighborhood Groups

Standard Binding Elements - Docket #9-04-06VW

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code . Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The total square footages are: 5,000 square foot restaurant, a 21,550 square foot retail building, a 6,000 square foot veterinary hospital.
3. Signs shall be in accordance with Chapter 8.
4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
5. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
6. Before any permit (including but not limited to building, parking lot, change of use, or site disturbance permit is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.

- c. A minor plat or legal instrument shall be recorded consolidating the property into one lot and dedicating right-of-way. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
- 7. If a building permit is not issued within two years of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.
- 8. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
- 9. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
- 11. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the February 15, 2007, Planning Commission meeting.
- 12. The façade elevations shall be in accordance with applicable form district standards and shall be approved by PDS staff prior to construction permit approval.
- 13. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the Land Development Code and shall be maintained there after. No building permits shall be issued unless such certification statement is submitted.
- 14. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.

All binding elements and/or conditions of approval stated in this report are accepted in total without exception by the entity requesting approval of this (these) development item(s).

Name

Title

Date